



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,473	04/12/2006	Kiwamu Kawasaki	KAWA3206	3226
23364	7590	10/02/2007		
BACON & THOMAS, PLLC 625 SLATERS LANE FOURTH FLOOR ALEXANDRIA, VA 22314			EXAMINER LAMM, MARINA	
			ART UNIT 1617	PAPER NUMBER
			MAIL DATE 10/02/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/575,473

Applicant(s)

KAWASAKI, KIWAMU

Examiner

Marina Lamm

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/12/06</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claims 1-4 are pending in this application filed 4/12/06, which is a 371 application of PCT/JP04/16939 filed 11/15/04, which claims priority to Japanese application No. 2003-386890 filed 11/17/03.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 2002308783 A (English Abstract), cited by the Applicant.

JP 2002308783 A teaches a pharmaceutical composition comprising an aqueous solution containing sodium, potassium, calcium, magnesium, chlorine and bicarbonate ions at total concentration of 0.54 mol/l or less and a saccharide such as glucose, at a concentration of 0.07-0.25 mol/l. The compositions of JP 2002308783 A can contain sodium glutamate and are useful for the treatment of atopic dermatitis, inflammation and skin itching. See Abstract. The Abstract does not explicitly teach the claimed molar concentration proportion of the ions and the claimed concentration of sodium glutamate. However, determination of optimal or workable molar concentration proportion of the ions as well as concentration of sodium glutamate by routine experimentation is obvious absent showing of criticality of the claimed proportion and

Art Unit: 1617

concentration. One having ordinary skill in the art would have been motivated to do this to obtain the desired anti-inflammatory, anti-allergic and antibacterial properties of the composition. The Courts have long held that proportions of ingredients, to impart patentability to an otherwise obvious chemical composition, must produce more than a mere difference in degree in the properties of the composition. *In re Fields* (CCPA 1962) 304 F2d 691, 134 USPQ 242. The proportions must be critical, i.e., they must produce a difference in kind rather than degree. *In re Touvay et al.* (CCPA 1958) 264 F2d 901, 121 USPQ 265; *In re Selmi et al.* (CCPA 1946) 156 F2d 96, 70 USPQ 197; *In re Waite* (CCPA 1948) 168 F2d 104, 77 USPQ 586.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Conclusion

3. No claims are allowed at this time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (571) 272-0618. The examiner can normally be reached on Mon-Fri from 11am to 7pm.

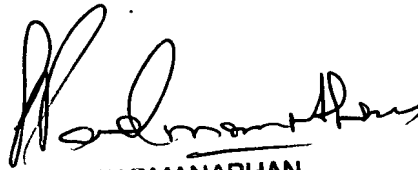
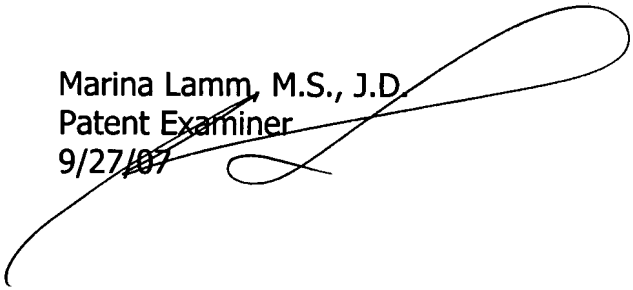
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, can be reached at (571) 272-0629.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300. Information regarding the status of an application may

Art Unit: 1617

be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Marina Lamm, M.S., J.D.
Patent Examiner
9/27/07



SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER